

by each advance of funds included in a RUS cost-of-money loan.

(d) Generally, no more than 10 percent of lending authority from appropriations in any fiscal year for RUS cost-of-money and RTB loans may be loaned to a single borrower. RUS will publish by notice in the FEDERAL REGISTER the dollar limit that may be loaned to a single borrower in that particular fiscal year based on approved RUS and RTB lending authority.

(e) On request of any borrower who is eligible for concurrent RUS cost-of-money and RTB loans for which funds are not available, the borrower shall be considered to have applied for a loan guarantee under section 306 of the RE Act.

(f) Concurrent RUS cost-of-money and RTB loans may be made simultaneously with hardship loans or guaranteed loans.

[58 FR 66255, Dec. 20, 1993, as amended at 62 FR 46870, Sept. 5, 1997]

§ 1735.32 Guaranteed loans.

(a) *General.* Loan guarantees under this section will be considered for only those borrowers specifically requesting a guarantee. Borrowers may also specify that the loan to be guaranteed shall be made by the Federal Financing Bank (FFB). RUS provides loan guarantees pursuant to section 306 of the RE Act. Guaranteed loans may be made simultaneously with hardship loans or concurrent RUS cost-of-money and RTB loans. No fees or charges are assessed for any guarantee of a loan provided by RUS. In view of the Government's guarantee, RUS generally obtains a first lien on all assets of the borrower (see § 1735.46).

(b) *Requirements.* To qualify for a guaranteed loan, a borrower must have a projected TIER (including the proposed loan or loans) of at least 1.2 as determined by the feasibility study prepared in connection with the loan. In addition, a borrower must meet all requirements set forth in the regulations applicable to a loan made by RUS with the exception that it is not required to participate in a state telecommunications modernization plan and is not subject to a subscriber per mile eligibility requirement, as provided in § 1735.31(a).

(c) *Net worth requirements.* RUS generally requires that borrowers seeking guaranteed loans have a net worth in excess of 20 percent of assets. RUS will, however, consider loan guarantees for borrowers with a net worth less than 20 percent.

(d) *Full amount guaranteed.* Loans are guaranteed in the full amount of principal and interest. Because of the Government's full faith and credit 100 percent guarantee of these loans, only RUS obtains a mortgage on the borrower's assets.

(e) *Federal Register notice.* After RUS has reviewed an application and determined that it shall consider guaranteeing a loan for the proposed project and if the borrower has not specified that the loan be made from the FFB, RUS shall publish a notice in the FEDERAL REGISTER. The Notice will include a description of the proposed project, the estimated total cost, the estimated amount of the guaranteed loan, a statement that the Federal Financing Bank (FFB) has a standing loan commitment agreement with RUS, and the name and address of the borrower to which financing proposals may be submitted.

(f) *Qualified lenders.* RUS considers loan guarantees on a case by case basis for loans made by the FFB and any other legally organized lending agency or by a combination of lenders that the Administrator determines to be qualified to make, hold and service the loan. "Legally organized lending agency" and "lender" include commercial banks, trust companies, mortgage banking firms, insurance companies, and any other institutional investor authorized by law to loan money. The borrower is responsible for evaluating all proposals received from lenders other than FFB. The borrower furnishes RUS with a report on the evaluations and its choice of proposals. However, at the request of the borrower, the guaranteed loan shall be made by the FFB.

(g) *Interest rate.* Guaranteed loans shall bear interest at the rate agreed upon by the borrower and lender. Guaranteed FFB loans shall be at a rate of interest that is not more than the rate of interest applicable to other similar

§ 1735.33

7 CFR Ch. XVII (1–1–01 Edition)

loans then being made or purchased by FFB.

(h) *Condition of guarantee.* RUS will not guarantee a loan if the income from the loan or the income from obligations issued by the holder of the loan, when the obligations are created by the loan, is excluded from gross income for the purpose of chapter I of the Internal Revenue Code of 1954.

(i) *Contract of guarantee.* If RUS is satisfied with the engineering and economic feasibility of the project and approves the borrower's choice of proposal, subject to the submission of satisfactory financing documents and to the satisfaction of other pertinent terms and conditions, RUS will prepare a contract of guarantee to be executed by the borrower, the lender, and RUS within a specified time. The lender, or its representative, shall have the right to examine the borrower's application and supporting data submitted to RUS in support of its request for financial assistance.

(j) *Loan servicing.* The contract of guarantee will require that arrangements satisfactory to RUS be made to service the loan. Required servicing by the lender will include:

(1) Determining that all prerequisites to each advance of loan funds by the lender under the terms of the contract of guarantee, all financing documents, and all related security instruments have been fulfilled. Such determinations may be met by obtaining RUS approval of each advance.

(2) Billing and collecting loan payments from the borrower.

(3) Notifying the Administrator promptly of any default in the payment of principal and interest on the loan and submitting a report, as soon as possible thereafter, setting forth its views as to the reasons for the default, how long it expects the borrower will be in default, and what corrective actions the borrower states it is taking to achieve a current debt service position.

(4) Notifying the Administrator of any known violations or defaults by the borrower under the lending agreement, contract of guarantee, or related security instruments, or conditions of which the lender is aware which might

lead to nonpayment, violation, or other default.

(k) *Payments under the contract of guarantee.* Upon receipt of the notification required in §1735.32(j)(3) of this section, RUS will pay the lender the amount in default with interest to the date of payment. When RUS has made a payment under a contract of guarantee, it will establish in its accounts the amount of the payment as due and payable from the borrower, with interest at the rate of interest specified in the lending agreement. RUS will work with the borrower and the lender in an effort to eliminate the borrower's default as soon as possible. RUS may also proceed with other remedies available under its security instruments.

(l) *Pledging of contract of guarantee.* Subject to applicable law, RUS will consider, on a case by case basis, permitting pledging of the contract of guarantee in order to facilitate the obtaining of funds by the lending agency to make the guaranteed loan.

[54 FR 13351, Apr. 3, 1989; 54 FR 16194, Apr. 21, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 56 FR 26597, June 10, 1991; 58 FR 66255, Dec. 20, 1993; 62 FR 46870, Sept. 5, 1997]

§ 1735.33 Variable interest rate loans.

After June 10, 1991, and prior to November 1, 1993, RUS made certain variable rate loans at interest rates less than 5 percent but not less than 2 percent. For those borrowers that received variable rate loans, this section describes the method by which interest rates are adjusted. The interest rate used in determining feasibility is the rate charged to the borrower until the end of the Forecast Period for that loan. At the end of the Forecast Period, the interest rate for the loan may be annually adjusted by the Administrator upward to a rate not greater than 5 percent, or downward to a rate not less than the rate determined in the feasibility study on which the loan was based, based on the borrower's ability to pay debt service and maintain a minimum TIER of 1.0. Downward and upward adjustments will be rounded down to the nearest one-half or whole percent. To make this adjustment, projections set forth in the loan